

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

MAY YANG, et al.,)	No. CV-F-01-5437 REC/LJO
)	
)	ORDER DENYING PLAINTIFFS'
Plaintiff,)	MOTION FOR RELIEF FROM
)	ORDERS DENYING REQUEST FOR
vs.)	EXTENSION AND DISMISSING
)	CASE AND DENYING DEFENDANTS'
)	MOTION TO STRIKE MOTION FOR
MAGEC, et al.,)	RELIEF FROM ORDERS
)	
)	
Defendant.)	
)	
)	

On May 16, 2005, the court heard plaintiffs' Motion for Relief from Orders Denying Request for Extension and Dismissing Case and defendants' Motion to Strike Motion for Relief from Orders.

Upon due consideration of the record and the arguments of the parties, the court denies these motions for the reasons set forth herein.

By Order filed on February 10, 2005, the court dismissed this action pursuant to Rule 41(b), Federal Rules of Civil Procedure, pursuant to motions to dismiss filed by the

1 defendants. Judgment for defendants was entered on February 10,
2 2005.

3 On March 14, 2005, plaintiffs filed a Notice of Appeal.
4 Also on March 14, 2005, plaintiffs filed a Motion for Relief from
5 Order, noticing the motion for hearing on Friday, April 22, 2005,
6 a date on which this court does not conduct law and motion. On
7 March 25, 2005, plaintiffs filed an Amended Motion for Relief
8 from Order, noticing the motion for hearing for April 29, 2005,
9 again a date on which this court does not conduct law and motion.
10 On March 31, 2005, plaintiffs filed a Second Amended Motion for
11 Relief from Order, noticing the Second Amended Motion for hearing
12 on May 2, 2005. On April 14, 2005, the County of Fresno
13 Defendants, City of Fresno Defendants, City of Clovis Defendants,
14 and City of Sanger Defendants filed a request for an order
15 shortening time to file a motion to strike plaintiffs' motion for
16 relief from order. The court denied the request for an order
17 shortening time, advised defendants to file their motion and
18 notice it for hearing on May 16, and continued plaintiffs' motion
19 for relief from order to May 16 as well. Defendants filed their
20 Motion to Strike on April 14, 2005. This motion has been joined
21 by the City of Coalinga and Michael Gilmore, and by the CHP and
22 CDC Defendants.

23 Plaintiffs' Motion for Relief from Order dismissing the
24 action and denying their request for extension of time to file
25 their opposition to the motions for summary judgment is supported
26 by declarations filed in the various notices of motion described

1 above. In other words, there is no single motion filed by
2 plaintiffs seeking relief from these orders which sets forth the
3 memorandum of points and authorities and supporting declarations,
4 making review of plaintiffs' motion more complicated than it
5 should be. It is noted that all of the declarations and exhibits
6 attached to the various pleadings filed in connection with the
7 Motion for Relief from Order, save one, constitute some of
8 plaintiffs' proposed evidence in opposition to the defendants'
9 motions for summary judgment.

10 In moving for relief from the dismissal of this action
11 pursuant to Rule 41(b), plaintiffs argue that dismissal is a
12 harsh sanction that should be imposed only when less drastic
13 sanctions would not have availed. Plaintiffs assert that the
14 "exemplars" of plaintiffs' proposed evidence in opposition to the
15 motions for summary judgment "illustrate that substantive
16 oppositions to defendants' dispositive motions were warranted and
17 appropriate, and very extensive." Mr. Holland also files a
18 declaration focusing on the denial of the request for extension
19 of time to respond to the motions for summary judgment and
20 averring in pertinent part:

21 2. In seeking and receiving the further time
22 they requested on more than one occasion to
23 file their motions (and received), defendants
24 City and County of Fresno indicated that they
25 would not be opposed to plaintiffs receiving
26 further time, given the sheer volume of
materials (defendants indicated the filing
alone of the paper motions at the clerks
window [prior to electronic filing] took
several hours) as well as the complexity of
the case and the dispositive motions.

1 Thereafter, it is my belief that defendants
2 aggressively and unfairly refused to
3 accommodate my need for further time, given
4 not only the volume and substance of the case
5 itself, but also the several difficulties I
6 had encountered with office equipment and my
7 health. The gist of these difficulties were
8 laid out in my opposition to the defendants'
9 motion to dismiss.

10 Plaintiffs argue:

11 It is plaintiffs' position that less drastic
12 measures were available and could have been
13 utilized, rather than outright dismissal.
14 Counsel's compliance with the Court's order
15 to pay sanctions, as he was able to do so,
16 showed that court orders were not being
17 ignored and not being intentionally violated.

18 ...

19 ... Less drastic measures were available and
20 would have sufficed, as plaintiffs had sought
21 a relatively short extension, thereby
22 allowing an additional 30 days to accommodate
23 both health and office equipment
24 difficulties.

25 In their Motion to Strike the Motion for Relief from Order,
26 defendants note that plaintiffs do not set forth a legal basis
27 for this court's reconsideration. Other than referring to
28 standards governing dismissal of an action pursuant to Rule
29 41(b), plaintiffs set forth no legal authority for
30 reconsideration of the court's Order, i.e., Rules 59 or 60,
31 Federal Rules of Civil Procedure. Because judgment for
32 defendants was entered on February 10, 2005, plaintiffs cannot
33 rely on Rule 59 because a motion for new trial or to alter or
34 amend the judgment pursuant to Rule 59 must be filed within 10
35 days after entry of the judgment. Rule 60(b) allows for relief

1 from judgment.

2 In plaintiffs' reply brief, Mr. Holland asserts that the
3 legal basis for the Motion for Relief from Order is Rule 60(b)(6)
4 and that, therefore, the motion is timely because it was filed
5 less than a year after entry of judgment.¹

6 There is no question that plaintiffs' Motion for Relief from
7 Order is timely under Rule 60(b).

8 Rule 60(b)(6) allows relief from a final judgment or order
9 for "any other reason justifying relief from the operation of the
10 judgment." As explained in United States v. Washington, 394
11 F.3d 1152, 1157 (9th Cir. 2005):

12 The Rule 60(b)(6) catchall provision applies
13 only when the reason for granting relief is
14 not covered by any of the other reasons set
15 forth in Rule 60 ... It 'has been used
16 sparingly as an equitable remedy to prevent
17 manifest injustice' and 'is to be utilized
18 only where extraordinary circumstances
19 prevented a party from taking timely action
20 to prevent or correct an erroneous judgment.'
21 ... Thus, a party seeking to reopen a case
22 under Rule 60(b)(6) 'must demonstrate both
23 injury and circumstances beyond his control
24 that prevented him from proceeding with the
25 prosecution or defense of the action in a
26 proper fashion.'

20 In their Motion to Strike, defendants note that the court
21 considered the appropriate factors in deciding to dismiss this

22 ¹Because plaintiffs' motion does not set forth any basis for
23 vacating the judgment under Rule 60(b), much less mention Rule
24 60(b) or any other legal ground upon which relief can be based,
25 defendants "request the entirety of Plaintiffs' Motion for Relief
26 be stricken because Plaintiffs have failed to identify the legal
grounds for such motion" The court denies this request
because the parties were able to fully address the applicability of
Rule 60(b) at oral argument.

1 action pursuant to Rule 41(b), rather than impose a lesser
2 sanction. In other words, this has already been considered and
3 rejected by the court for the reasons stated in the February 10,
4 2005 Order. The court notes that Mr. Holland does not suggest
5 any appropriate lesser sanction in the Motion for Relief from
6 Order and, for the reasons stated in the February 10, 2005 Order,
7 the court cannot accept any representations by Mr. Holland that
8 he will timely comply with court orders given his history in this
9 action, even after being twice warned that the failure to timely
10 comply would result in dismissal of the action. Furthermore,
11 defendants submit the Declaration of Erica Camarena, counsel for
12 the County of Fresno Defendants, the City of Fresno Defendants,
13 the City of Clovis Defendants, and the City of Sanger Defendants.
14 Ms. Camarena avers in pertinent part:

15 3. Mr. Holland made casual representations
16 to me that he may be seeking an extension
17 within which to file his Oppositions to
18 Defendants' Motions for Summary Judgment.
19 However, he never made any attempt to contact
20 me or my office to request or propose
21 stipulated extension dates nor did he seek
22 authorization by the court.

23 4. Mr. Holland did not communicate with me
24 or my office that difficulties with office
25 equipment and Mr. Holland's health prevented
26 him from timely filing his Opposition.

27 5. On or about December 2, 2004, I provided
28 Mr. Holland with electronic copies (via e-
29 mail attachments) of Defendants's Separate
30 Statements of Undisputed Facts to save him
31 time in preparing Plaintiffs' Oppositions.

32 6. In a letter dated December 7, 2004, I
33 confirmed the transmission and informed Mr.
34 Holland that since he had not advised me of

1 any difficulties in opening the attachments,
2 I made the assumption that he had no such
3 problems

4 7. On or about January 10, 2005, (a month
5 after Defendant's [sic] filed their Motion to
6 Dismiss) our office received a letter from
7 Mr. Holland informing that he needed the
8 Statements of Undisputed Facts sent to him
9 again due to computer failure. In his
10 letter, Mr. Holland wrote that he had
11 recovered his computer system.

12 8. I immediately re-sent the Statements of
13 Undisputed Facts on a floppy disc to Mr.
14 Holland

15 9. At one point in these discussions Mr.
16 Holland made a statement to me that the
17 Federal Court's electronic filing
18 requirements made it expensive and time
19 consuming for Mr. Holland to get set up and
20 ready for filing. He continued that on at
21 least two occasions, the court clerk red-
22 slipped him for not complying with those
23 requirements.

24 10. This was the extent of Mr. Holland's
25 discussion with me regarding his computer
26 equipment difficulties. At no time during
these discussions did Mr. Holland indicate
that these issues required an extension to
file his Opposition nor did he request one.
At no time during these discussions did I
refuse to accommodate his needs.

11. On or about Thursday, January 20, 2005,
I had a telephone conversation with Mr.
Holland wherein Mr. Holland informed me that
he was going to be having dental work done
over the weekend. In that same conversation
Mr. Holland indicated that he was 'working on
his Opposition.' I concluded this
conversation by advising Mr. Holland that he
should feel free to contact me if he needed
any information. At no time during this
conversation did Mr. Holland request an
extension, propose stipulated extended dates
or inform counsel that his dental work would
preclude him from timely filing his
Opposition. At no time during this

1 conversation did I refuse to accommodate his
2 needs.

3 12. Before receiving further time,
4 Defendants conferred with all counsel the
5 very moment an extension was perceived [sic],
6 proposed extended dates, signed stipulations
7 and obtained authorizations from the court
8 changing the scheduling order before the
9 required filing dates.

10 Defendants also contend that the various exhibits attached
11 to the various pleadings filed in connection with the Motion for
12 Relief "are irrelevant to the core issue in Plaintiffs' Motion
13 for Relief; whether Plaintiffs should be relieved from the
14 Court's Order dismissing this case and denying their request for
15 an extension." Defendants argue that the substance of these
16 exhibits "is immaterial, impertinent, substantially hearsay and
17 appears to have been attached in bad faith or with the purpose of
18 causing delay." Defendants request that these exhibits, Exhibits
19 1-5, "be stricken from the Court's record and not be submitted to
20 the Ninth Circuit for review in Plaintiffs' Appeal."

21 In their reply brief, plaintiffs argue that the exhibits are
22 relevant to the Motion for Relief from Order pursuant to Rule
23 60(b)(6):

24 The exhibits filed in support of the motion
25 for relief, mostly proposed separate
26 statements in opposition to defendants'
motions for summary judgment support a
conclusion that plaintiffs' underlying
substantive position(s), that is, oppositions
to defendants' motions for summary judgment
or adjudication, has (have) [sic] merit. The
sheer volume of detail in those exhibits also
tends to show the extraordinary amount of
work and time needed to prepare them, thus
supporting a conclusion that delay was not

1 forestalling some inevitable judgment for
2 defendants, or delay just 'for delay's sake.'

3 The court does not agree with defendants' that these
4 exhibits should be stricken. However, the court concludes that
5 the exhibits do not compel relief from judgment. There was no
6 discussion in the February 10, 2005 Order dismissing this action
7 as a sanction under Rule 41(b) that plaintiffs might not be able
8 to demonstrate a genuine issue of material fact or demonstrate
9 the substantive merits of their various claims. There is no
10 question that the various motions for summary judgment were
11 voluminous and complicated. However, it was for that reason that
12 the briefing schedule was agreed to by stipulation and the
13 court's calendar cleared to accommodate hearing those motions.
14 The problem was that Mr. Holland, despite being warned, failed to
15 timely file his oppositions to those motions for summary judgment
16 and failed to timely request an extension of time to do so. The
17 court is not persuaded that extraordinary circumstances beyond
18 Mr. Holland's control (the Rule 60(b)(6) standard) prevented him
19 from timely responding to the motions for summary judgment or
20 timely requesting an extension of time within which to do so.
21 Mr. Holland's history in this action described in February 10,
22 2005 Order amply demonstrates his unwillingness or inability to
23 timely comply with court orders and the rules of court. The
24 court's Order dismissing this action under Rule 41(b) discussed
25 fully all of the factors required to be considered including, as
26 noted, the availability of lesser sanctions. As defendants

1 contend, plaintiffs' remedy is now to the Ninth Circuit.

2 ACCORDINGLY:

3 1. Plaintiffs' Motion for Relief from Orders Denying
4 Request for Extension and Dismissing Case is denied.

5 2. Defendants' Motion to Strike Plaintiffs' Motion for
6 Relief from Orders is denied.

7 IT IS SO ORDERED.

8 Dated: May 17, 2005
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE